IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16588 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE
and
HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GLENCORE INTERNATIONAL AG.

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 16588 of 2003
M/S TRIVEDI & GUPTA for Petitioner No. 1
MR DN PATEL for Respondent No. 1
SERVED BY RPAD - (N) for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE A.R.DAVE
and
HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 24/12/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE A.R.DAVE)

Rule. Service of rule is waived by Shri D.N. Patel, Sr. Central Government Standing Counsel, for the respondents. At the request of the learned advocates, the petition is finally heard today.

2. The question involved in this petition is whether the commodity, which is being brought into the country, is Aviation Turbine Fuel ('ATF' for short) or Superior Kerosene Oil ('SKO' for short). According to the revenue authorities, the commodity brought is in the nature of AFT, whereas, according to the petitioner, it is SKO. Because of the aforesaid controversy, the commodity is not being released by the respondent authorities.

3. In this petition, it has been prayed by the petitioner that there are buyers, who are prepared to buy the commodity even as SKO, and by way of an interim arrangement, the respondent authorities should be directed to provisionally release the commodity on the conditions, which might be imposed by this court.

4. On the other hand, learned Sr. Central Government Standing Counsel Shri D.N. Patel has submitted that the commodity is ATF and, therefore, only a canalising agency, with permission to import the same, can import it, and as the petitioner not being a canalising agency, cannot be permitted to import or sell the same and, therefore, the commodity has been detained at Kandla Port.

5. It has been however submitted that the respondent authorities are prepared to release the commodity on provisional basis on certain conditions, which are incorporated in letter dated 20.11.2003, a copy of which is at Annexure 'G' to the petition.

6. It cannot be disputed that a huge quantity of the commodity is lying at Kandla Port, which is valued at more than Rs. 25 crores. As the quantity is huge, it is difficult to take it back to a different country and, therefore, in the interest of the parties, it would be just and proper to permit, as an exceptional case, provisional release of the commodity upon modification of some of the conditions on which the respondent authorities are agreeable to release the same provisionally.

7. Looking to the facts of the case, and more particularly when Indian Oil Corporation, who was to purchase the said commodity, has come to a conclusion that the commodity is not ATF, and as IOC is not prepared to purchase the same as AFT, the petitioner shall not be bound by condition No. 4, which has been incorporated in the aforestated letter. Therefore, instead of condition No. 4, the following condition shall be substituted :

"(4) After provisional release of the commodity, the same shall be delivered to the buyers on filing their respective Bills of Entry as SKO and upon payment of full duty applicable to ATF as per valuation in the show-cause notice."

The other conditions incorporated in the aforestated letter, which is at Annexure 'G' to the petition, shall remain as they are. Needless to say that it would be open to the respondent authorities to assess the duty as they think it proper in accordance with law and it would be open to the petitioner to raise all possible contentions before the respondent authorities with regard to the nature of the commodity. The aforestated arrangement is being made without prejudice to the rights and contentions of the parties.

8. In view of the aforestated order, it would not be necessary for the petitioner to re-export the commodity as per letter dated 17.12.2003 and the respondent authorities shal also not insist that the commodity in question should be re-exported.

9. In view of the aforestated order, the grievance of the petitioner would not survive and the petition is disposed of. Rule is made absolute to the above extent with no order as to costs.

(A.R. Dave, J.)

(K.A. Puj, J.)

(hn)